

Securities and Exchange Commission,	)	<b>United States District Court</b>
	)	<b>Northern District of Illinois</b>
Plaintiff	)	
	)	
vs.	)	
	)	
CytoCore, Inc.,	)	
Daniel J. Burns, and	)	
Robert F. McCullough, Jr.	)	
	)	
Defendants	)	

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“the Commission”), for its Complaint, alleges as follows:

**SUMMARY**

1. From 2003 to 2008, Daniel Burns (“Burns”), a consultant for CytoCore, Inc. (“CytoCore” or “the Company”) and the Company’s Chairman from October 2007 through April 2009, employed fraudulent schemes to profit from his CytoCore stock holdings, as well as to obtain improper compensation and benefits from CytoCore. Burns profited by hundreds of thousands of dollars from this illegal conduct.

2. As part of his deceptive scheme concerning CytoCore stock, in February 2008, Burns caused CytoCore to issue a press release touting a personal investment in CytoCore shares by him, and then he secretly sold shares beginning immediately following that announcement and continuing over the next thirty days.

3. Burns’ secret selling of CytoCore stock in February and March 2008 also constituted insider trading because Burns was in possession of material, nonpublic information about an ongoing CytoCore private stock offering at the time of his sales.

4. Burns also repeatedly violated insider reporting requirements by reporting on required disclosure forms filed with the Commission, known as “Forms 4,” only his purchases of CytoCore stock and not his sales, and by reporting inaccurate stock holdings to further conceal those sales. As part of his concealment of his sales of CytoCore stock, in July 2008 Burns secretly transferred some of his CytoCore stock to a childhood friend, Person A, who then sold the shares and remitted the proceeds to Burns.

5. As part of the scheme to obtain improper compensation and benefits from CytoCore, between 2003 and 2006 Burns collected commissions from CytoCore for selling CytoCore securities. Burns’ solicitation of investors and receipt of transaction-based compensation violated the federal securities laws because he was not registered as, nor associated with, a registered broker-dealer.

6. Burns also fraudulently obtained additional compensation from CytoCore by making false claims for fees purportedly earned by Person A for assisting in offering and selling CytoCore securities, with Person A then remitting most of that compensation from CytoCore to Burns.

7. Finally, Burns submitted to CytoCore claims for expenses purportedly incurred in connection with his and Person A’s efforts in offering and selling CytoCore securities. Many of these claims were fabricated or otherwise did not constitute legitimate expenses incurred in connection with their offering of CytoCore securities.

8. CytoCore, through Robert McCullough (“McCullough”), its CytoCore’s Chief Executive Officer and Chief Financial Officer, knowingly provided Burns with improper compensation by authorizing commission payments to Burns and Person A, even though

McCullough knew that Burns and Person A were not associated with a registered broker-dealer – a prerequisite for them to legally earn those commissions.

9. McCullough also failed to file required disclosure forms with the Commission reflecting more than 100 transactions in CytoCore stock and misreported his total holdings in the disclosure forms that he did file and in CytoCore’s proxy statements. In total, McCullough underreported his accumulation of CytoCore shares from August 2006 through February 2010 by more than one million shares.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b), 77v(a)], and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)-(e), 78aa]. The defendants have, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or the mails, or of the facilities of a national securities exchange in connection with the acts, practices and courses of business alleged in this complaint.

11. This is an appropriate venue under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Many of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred within the Northern District of Illinois. In addition, CytoCore’s principal place of business is in Chicago, Illinois. McCullough also maintains a residence in Chicago, Illinois.

### **THE DEFENDANTS**

12. CytoCore, Inc., a Delaware corporation with its principal place of business in Chicago, Illinois, is a clinical diagnostics company engaged in the design, development, and commercialization of screening, diagnostic, and therapeutic-delivery products in women’s

healthcare. CytoCore's common stock is registered pursuant to Section 12(g) of the Exchange Act and is quoted on the over-the-counter bulletin board.

13. Daniel Burns, age 53, is a resident of Carlsbad, California. Burns was a consultant for CytoCore from 2003 to 2008 and was Chairman of CytoCore's Board of Directors from October 2007 through April 2009.

14. Robert F. McCullough, Jr., age 56, is a resident of Kentfield, California. McCullough has been Chief Financial Officer of CytoCore since September 2005, Chief Executive Officer since November 2007, a CytoCore director since 2005, and Chairman of the Board of Directors since April 2009. McCullough is also President and Portfolio Manager of Summitcrest Capital Inc., an investment adviser registered with the state of California that acts as the adviser for Summitcrest Capital Partners, a California-registered investment partnership founded by McCullough in 2004.

## FACTS

### I. CytoCore Background

15. CytoCore is a publicly-traded clinical diagnostics company that develops products to screen and test for cervical cancer. CytoCore's primary marketable product, SoftPAP, is a pap smear technology that purports to provide superior comfort and more effective screening for cervical cancer. CytoCore obtained regulatory approval to sell SoftPAP in Europe in 2007 and in the United States in early 2008.

### II. CytoCore's 2008 PIPE Offering and Burns' Manipulative Trading

16. From December 2007 through March 2008, CytoCore raised \$10 million through a private stock offering known as a "PIPE" offering, to help fund the anticipated successful launch of SoftPAP. CytoCore's offering involved the sale of "units" -- for \$4 per unit --

consisting of two shares of common stock and one three-year warrant exercisable at \$2 per share. Burns, Chairman of CytoCore's Board of Directors and a CytoCore consultant at the time, personally solicited more than \$2 million from investors for CytoCore in this securities offering.

17. In connection with this PIPE offering, Burns engaged in a fraudulent scheme to profit from his CytoCore stock holdings. Burns: (1) touted CytoCore by publicly announcing an investment he made in the Company, and then secretly sold shares a few days later; (2) engaged in insider trading by selling those shares ahead of the announcement of the PIPE offering; and (3) continued to secretly sell CytoCore shares following the PIPE by first transferring the shares to his childhood friend, Person A, who then sold the shares and remitted the proceeds to Burns.

**A. Burns' Investment in the PIPE Offering**

18. In late January and early February 2008, Burns and McCullough invested in CytoCore's ongoing PIPE offering. Burns initially invested \$500,000 in late January, and McCullough invested \$150,000.

19. After their initial investments, Burns encouraged McCullough to invest more with him in early February so that they could issue a press release announcing insider buying of \$800,000 or \$900,000. Burns invested an additional \$100,000 and McCullough invested \$50,000 more. Burns' \$600,000 total investment included 300,000 shares of CytoCore stock at \$2 per share and 150,000 warrants exercisable at \$2 per share.

20. In early February 2008, Burns filed a Form 4 disclosure form with the Commission to report his investment. On this Form 4, Burns reported total CytoCore stock holdings of 3,100,500 shares.

### **B. CytoCore Press Release Touting Burns' Investment**

21. In early February 2008, CytoCore publicly announced Burns' and McCullough's investment. Burns helped draft the press release. Burns was quoted in the release, stating, in part, "We believe our investment illustrates our commitment to generating shareholder returns for our investors, as well as our confidence in the strategy we are implementing to generate those returns." CytoCore's stock price closed 9.5% higher that day than its previous close.

22. The day after issuing the press release, Cytocore announced that the Food and Drug Administration had approved the sale of SoftPAP in the United States. Cytocore's stock price closed 14.8% higher that day than its previous close.

### **C. Burns' Secret Selling of CytoCore Stock**

23. The day after publicly announcing his investment and his demonstrated commitment to shareholder return, Burns opened a new brokerage account and delivered 120,000 previously-held CytoCore shares into the account. On the account opening form, Burns falsely stated that he was not an officer or director of a public company.

24. Beginning immediately and continuing through early March 2008, Burns sold 47,000 shares of CytoCore stock in his newly-opened account in small increments over six separate trading days at prices between \$3.15 and \$3.78 per share, earning more than \$150,000 in proceeds.

25. Burns failed to file required Form 4 disclosure forms with the Commission to report any of his February and March sales.

26. Burns engaged in a pump-and-dump fraudulent trading scheme. Burns invested in the PIPE offering at a discounted stock price and then, in part based on CytoCore's early February announcement of his investment, sold a portion of his new investment at an inflated

stock price, without disclosing to shareholders that he was selling shares immediately following his investment.

**D. CytoCore's Announcement of its PIPE Offering**

27. In mid-March 2008, CytoCore publicly announced the closing and results of its \$10 million PIPE fundraising, which priced CytCore's stock at a significant discount to its then-current market price. CytoCore's stock price fell 11.9% that day and another 7.7% the following day.

28. Burns sold CytoCore stock in February and March 2008 before the public announcement of the PIPE offering. Burns was intimately involved in soliciting investors for the PIPE offering, and he was repeatedly reminded that the offering was not public. Before Burns began selling his shares in February and March, CytoCore's public relations consultant informed Burns that announcing CytoCore's offering could negatively affect CytoCore's stock price. By selling CytoCore stock in February and March 2008 before this announcement, Burns avoided losses associated with the decline in CytoCore's stock price following the PIPE announcement.

**E. Burns' Trading Following the PIPE Offering and Misreporting of Holdings**

29. Following CytoCore's precipitous stock price drop after its announcement of the PIPE offering, Burns reinvested in CytoCore at significantly lower prices from that which he sold shares in February and March. In early May 2008, Burns repurchased 30,000 shares of CytoCore stock.

30. Unlike with his February and March sales of CytoCore stock, Burns filed a required Form 4 disclosure form for his May purchases of CytoCore stock, but the disclosure form misreported the amount of his May 2008 purchases of CytoCore stock at 40,000 shares, and it misreported the amount of Burns' total holdings in CytoCore stock. Burns reported an

increase in total holdings of CytoCore stock from his February 2008 Form 4, failing to account for any of his February or March 2008 sales. Moreover, Burns' and CytCore's records reflect a significantly lower share balance for Burns than he reported in his Form 4. Burns thus overstated his CytoCore stock holdings in his February and May 2008 Forms 4 by more than one million shares.

31. Burns also reported the same inaccurate holdings in CytoCore stock included in his May 2008 Form 4 to the Company for inclusion in CytoCore's proxy statement and failed to disclose to the Company his unreported sales. On June 6, 2008, CytoCore filed a proxy statement with the Commission by order of CytoCore's Board of Directors, which significantly overstated Burns' stock holdings. This proxy statement also contained an incomplete summary of Burns' stock transactions in 2008, and it failed to identify all of Burns' failures to file required Form 4 disclosure forms with the Commission, stating incorrectly that all Forms 4 were timely filed except for one by Burns that was filed one day late.

#### **F. Burns' Transfer of Additional Shares to Person A for Secret Disposition**

32. Between early May and early July 2008, CytoCore's stock price fell more than 30%. In early July 2008, Person A, Burns' childhood friend and personal assistant, opened his first-ever brokerage account.

33. In mid-July 2008, Burns transferred 70,000 CytoCore shares to Person A's new brokerage account. Over the next six months, as CytoCore's stock price continued to decline, Person A sold the shares in small increments. Person A remitted nearly all of the proceeds from these sales to Burns.

34. Burns never filed required Form 4 disclosure forms with the Commission for the transfer of the shares to Person A or for Person A's subsequent sale of those shares on behalf of Burns.

### **III. CytoCore's Improper Payment of Brokerage Commissions to Burns**

35. Burns also illegally profited from CytoCore by receiving, both directly and indirectly through Person A, improper commission payments for selling CytoCore securities.

36. From 2003 through 2008, Burns solicited investors for CytoCore, and in many instances induced investors to purchase CytoCore stock. In connection with Burns' solicitation of investors, Burns regularly received commissions for selling CytoCore stock to investors. Burns also directed CytoCore to pay commissions to Person A for Person A's purported assistance in investor solicitation. Person A subsequently remitted most of these commissions to Burns.

37. Neither Burns nor Person A were associated with a broker-dealer registered with the Commission as required by Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], and therefore their receipt of transaction-based compensation for selling CytoCore securities violated the federal securities laws.

#### **A. CytoCore's Payment of Brokerage Commissions to Burns**

38. From 2003 to 2006, CytoCore made numerous compensation payments to Burns outside of his regular monthly fee earned under his consulting agreement. Most of these additional payments related to Burns' solicitation of investors. During this period, CytoCore paid Burns more than \$1 million that was classified as "finders fees" or "financing costs" in CytoCore's accounting records, or was otherwise classified in a manner that indicate that they constituted commission payments for selling CytoCore stock to investors.

39. As Chief Financial Officer, McCullough directed CytoCore to make commission payments to Burns, despite knowing that only those registered as or associated with registered broker-dealers are permitted to receive transaction-based compensation for solicitation of investors.

**B. CytoCore's Payment of Brokerage Commissions to Person A, and Person A's Transfers to Burns**

40. From 2006 to 2008, Burns used Person A to siphon additional money from CytoCore by claiming that Person A earned commissions for bringing investors to CytoCore.

41. Person A, who is a high school graduate with no additional educational background, had no previous experience investing in or selling securities. During this period, Person A worked for Burns as his personal assistant.

42. On at least six occasions from 2006 to 2008, Burns directed CytoCore to pay Person A more than \$150,000 for his supposed part-time work assisting Burns with selling CytoCore stock, when in fact Person A did little work soliciting investors for CytoCore. Person A then remitted to Burns nearly all of the commission payments he received from CytoCore.

43. McCullough approved these payments while knowing that Person A was not associated with a registered broker-dealer, and even discussed with Burns in 2008 that Person A should not be receiving commissions because of his lack of association with a broker-dealer.

44. In connection with requesting and justifying these payments to Person A, Burns knowingly or recklessly made misrepresentations to CytoCore regarding the work Person A performed and in connection with Burns' and Person A's selling of CytoCore securities. For example, when Burns made a request for an \$85,000 payment to Person A in 2007, Burns stated that Person A had raised more than \$1 million from European investors and had taken multiple

trips to Europe to secure investors, when, in fact, Person A had never been to Europe. Person A's role was limited to answering Burns' phone and talking to investors who called or with whom Burns was meeting until Burns became available to talk.

45. Burns also directed CytoCore to pay Person A \$42,000 in 2008, which he justified as a 4% commission on \$1.1 million Person A purportedly assisted in raising for the PIPE offering. In fact, Person A did not actually help raise \$1.1 million for CytoCore.

46. Immediately after receiving commission payments from CytoCore, Person A remitted nearly all of the CytoCore commission payments to Burns. These commission payments served as a tool for Burns to extract additional compensation from CytoCore through false claims of work performed by Person A.

47. By not disclosing his fraudulent scheme with Person A to indirectly receive commission payments from CytoCore, Burns also caused CytoCore to omit the payment of commissions as a form of compensation to Burns in CytoCore's June 6, 2008 proxy statement.

### **C. Burns' False Claims for Expenses Associated with His Investor Solicitation**

48. Burns also made several false claims for expenses incurred in connection with his solicitation of investors. From 2006 to 2008, Burns submitted claims to CytoCore for expenses associated with his solicitation of investors, several of which were false.

49. For example, Burns submitted claims for expenses incurred on trips to Europe to solicit investors, yet he never traveled to Europe during this period. Burns also made travel expense claims for investor meetings in various cities to which Burns did not travel. As another example, Burns once submitted a bill for his parents' stay at a resort near his home as an expense claim for an investor meeting, when in fact it had nothing to do with CytoCore.

#### **IV. McCullough's Failure to Disclose Trading in CytoCore Securities**

50. From August 2006 through February 2010, McCullough frequently traded CytoCore stock in the open market, yet he reported only a small fraction of these transactions on required Form 4 disclosure forms with the Commission.

51. From October 2008 through February 2010, McCullough purchased 520,812 shares of CytoCore stock in his personal investment account over 76 separate trading days, yet he reported on Forms 4 filed with the Commission purchases of only 219,000 shares over only 14 trading days.

52. Additionally, from August 2006 through January 2010, Summitcrest Capital Partners, the California-registered investment firm managed by McCullough and in which McCullough has a 10% ownership interest, purchased CytoCore stock on 128 trading days and sold CytoCore stock on five trading days, for a net accumulation of 1,786,000 split-adjusted shares. However, McCullough reported on Forms 4 filed with the Commission purchases on only 32 trading days for a total accumulation of 839,700 shares, and he did not report any of the sales.

53. In July and August 2007, McCullough purchased a total of 15,000 shares of CytoCore stock for six family trusts for which he was trustee, but he failed to report these purchases or holdings on Forms 4.

54. McCullough routinely reported incorrect total stock holdings on the Forms 4 that he did file with the Commission, failing to account for his unreported transactions when he adjusted his total holdings from the previously filed Form 4 to the newly filed Form 4. McCullough's Form 4 filed with the Commission since 2006 routinely contained incorrect amounts for McCullough's holdings.

55. In 2007, 2008, and 2009, CytoCore, through McCullough, filed proxy statements with the Commission containing incorrect stock holdings for McCullough, based on the incorrect amounts McCullough reported on his Forms 4. These proxy statements also contained incomplete and inaccurate synopses of McCullough's trading in CytoCore stock for that year, and misstated that all violations of the stock reporting requirements for officers and directors under Section 16 of the Exchange Act had been disclosed, when in fact McCullough's numerous violations of Section 16 had not been disclosed.

**FIRST CLAIM FOR RELIEF**  
**Violation of Section 17(a) of the Securities Act Against Burns**

56. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 55 as if fully set forth herein.

57. Defendant Burns, directly or indirectly, knowingly, recklessly or negligently, in the offer or sale of a security, by the use of means or instrumentalities of interstate commerce or the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or the omission of a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.

58. By engaging in the conduct described above, Burns violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**  
**Violation of Section 10(b) of the Exchange Act**  
**and Exchange Act Rule 10b-5 Against Burns**

59. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. Defendant Burns, knowingly or recklessly, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of a material fact or omitted a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or course of business which operated or would operate as a fraud or deceit upon other persons.

61. By engaging in the conduct described above, Burns violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**THIRD CLAIM FOR RELIEF**  
**Violation of Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 Against**  
**Burns, McCullough, and CytoCore**

62. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 61 as if fully set forth herein.

63. Defendants CytoCore, Burns, and McCullough, directly or indirectly, knowingly, recklessly or negligently, by the use of means or instrumentalities of interstate commerce or of the mails, or of a facility of a national securities exchange or otherwise, solicited by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct statements in earlier communications with respect to the solicitation of the proxy for the same meeting or subject matter which were false or misleading.

64. By engaging in the conduct described above, CytCore, Burns, and McCullough violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

**FOURTH CLAIM FOR RELIEF**  
**Violation of Section 15(a) of the Exchange Act Against Burns**

65. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 64 as if fully set forth herein.

66. Defendant Burns, while acting as a broker or dealer, effected transactions in or induced or attempted to induce the purchase or sale of securities when he was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker-dealer.

67. By engaging in the conduct described above, Burns violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**FIFTH CLAIM FOR RELIEF**  
**Aiding and Abetting Violations of Section 15(a) of the Exchange Act Against McCullough and CytoCore**

68. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 67 as if fully set forth herein.

69. Defendants CytoCore and McCullough knowingly provided substantial assistance to Burns in his acting as a broker or dealer while not registered with the Commission as a broker or dealer or being associated with an entity registered with the Commission as a broker-dealer.

70. By engaging in the conduct described above, CytoCore and McCullough aided and abetted Burns' violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

**SIXTH CLAIM FOR RELIEF**  
**Violations of Section 16(a) of the Exchange Act and Rule 16a-3 Thereunder Against**  
**McCullough**

71. The Commission realleges and incorporates by reference the allegations of paragraphs 1 through 70 as if fully set forth herein.

72. Defendants Burns and McCullough, while directors or officers of CytCore, failed to file with the Commission required statements of changes in beneficial ownership on Form 4 and/or annual statements on Form 5, and reported inaccurate stock holdings on Forms 4 that they did file.

73. By engaging in the conduct described above, Burns and McCullough violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully prays that this Court:

**I.**

Permanently enjoin Defendant CytoCore from violating Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9], and from aiding and abetting violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**II.**

Permanently enjoin Defendant Burns from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 14(a), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78n(a), 78o(a), 78p(a)] and Exchange Act Rules 10b-5, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.14a-9, 240.16a-3].

**III.**

Permanently enjoin Defendant McCullough from violating Sections 14(a) and 16(a) of the Exchange Act [15 U.S.C. §§ 78n(a), 78p(a)] and Exchange Act Rules 14a-9 and 16a-3 [17

C.F.R. §§ 240.14a-9, 240.16a-3], and from aiding and abetting violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**IV.**

Issue an order directing Defendant Burns to disgorge all ill-gotten gains, compensation, and benefits (whether realized, unrealized or received) obtained through the conduct described herein, plus prejudgment interest thereon.

**V.**

Issue an order directing Defendant Burns to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and directing Defendant McCullough to pay a civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

**VI.**

Issue an order barring Defendant Burns from acting as an officer or director of any public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

**VII.**

Issue an order requiring CytoCore to comply with the undertakings described in the Consent of CytoCore, Inc. filed simultaneously with this complaint.

**VIII.**

Retain jurisdiction over this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**IX.**

Grant such other relief as the Court may deem just and appropriate.

Dated: January 13, 2011

Respectfully submitted,

**Eric M. Phillips**

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